

117TH CONGRESS
1ST SESSION

H. R. 5433

To protect the privacy of internet users by reinforcing online privacy rights and through the establishment of a national Do Not Track system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 2021

Mr. POSEY (for himself, Mr. GOHMERT, and Mr. MULLIN) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To protect the privacy of internet users by reinforcing online privacy rights and through the establishment of a national Do Not Track system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Renew Effective Protection of Americans’ Information
6 Rights Act” or the “REPAIR Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DATA PRIVACY BILL OF RIGHTS

- Sec. 101. Short title.
- Sec. 102. Policy of the United States.
- Sec. 103. Findings.
- Sec. 104. Rights relating to transparency.
- Sec. 105. Right to delete.
- Sec. 106. Right to correct inaccuracies.
- Sec. 107. Right to controls.
- Sec. 108. Right to data minimization.
- Sec. 109. Right to data security.
- Sec. 110. Prohibition of service offers conditioned on waivers of privacy rights.
- Sec. 111. Scope of coverage.
- Sec. 112. Small business exception.
- Sec. 113. Application and enforcement.
- Sec. 114. State privacy protections.
- Sec. 115. Severability.
- Sec. 116. Definitions.
- Sec. 117. Effective date.

TITLE II—DO NOT TRACK

- Sec. 201. Short title.
- Sec. 202. Establishment of Do Not Track system.
- Sec. 203. Do Not Track: requirements for operators; prohibited acts.
- Sec. 204. Scope of coverage.
- Sec. 205. Application and enforcement.
- Sec. 206. State privacy protections.
- Sec. 207. Severability.
- Sec. 208. Definitions.
- Sec. 209. Effective date.

1 **TITLE I—DATA PRIVACY BILL OF**

2 **RIGHTS**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Data Privacy Bill of

5 Rights Act”.

6 **SEC. 102. POLICY OF THE UNITED STATES.**

7 It is the policy of the United States that individuals

8 have fundamental rights to secure and protect their pri-

9 vacy in data collected from and about them by firms doing

10 business with them as provided for in this title and that

1 it is also a fundamental purpose of the Federal Govern-
2 ment to defend and enforce such privacy rights.

3 **SEC. 103. FINDINGS.**

4 Congress finds the following:

5 (1) Individuals are endowed with rights to se-
6 cure and protect data related to their lives, their
7 patterns of movement and commercial exchange and
8 any other information that is classified as sensitive
9 pursuant to this title.

10 (2) Individuals have a right to complete trans-
11 parency with respect to the exchanges they make in
12 terms of a complete accounting of both the nonpecu-
13 niary and pecuniary costs allocated to and collected
14 from them.

15 (3) While the internet and other technologies
16 have produced enormous benefits to the Nation, they
17 have also had unintentional consequences in eroding
18 individual data privacy rights.

19 (4) The Nation needs to update individual
20 rights to include adequate and effective protections
21 to secure and sustain individual rights to data pri-
22 vacy.

23 (5) That protection of individual data privacy
24 rights should be secured with due consideration of
25 the collateral rights of entities to pursue businesses

1 while assuring complete transparency to individuals
2 as relates to their data and the role that such data
3 plays in the entities' business models.

4 **SEC. 104. RIGHTS RELATING TO TRANSPARENCY.**

5 (a) RIGHT TO ACCESS.—Upon the verified request of
6 an individual, a covered entity shall provide to the indi-
7 vidual—

8 (1) in a portable format, without licensing re-
9 strictions, the covered data of the individual that is
10 collected, processed, or transferred by the covered
11 entity; and

12 (2) in a human-readable format that a reason-
13 able individual can understand—

14 (A) a copy of the covered data of the indi-
15 vidual that is collected, processed, or trans-
16 ferred by the covered entity;

17 (B) a list of each category of third party
18 to which the covered entity has transferred the
19 covered data of the individual; and

20 (C) the identity of each such third party
21 and a description of the covered data that was
22 transferred to such third party and the purpose
23 of the transfer.

24 (b) RIGHT TO IMMEDIATE NOTIFICATION OF COL-
25 LECTION.—

1 (1) IN GENERAL.—On every website or applica-
2 tion landing page, the second-party operator of a
3 covered internet platform shall display, immediately
4 when the page is accessed by an individual, an easily
5 identifiable indicator that provides a real-time notifi-
6 cation of whether or not the covered data of the in-
7 dividual is being actively collected by the covered
8 internet platform or any program of a third-party
9 operator that appears on the covered internet plat-
10 form.

11 (2) CONTENTS OF NOTIFICATION.—The notifi-
12 cation required by paragraph (1) shall include (or
13 provide a link to or other convenient means of ac-
14 cessing) the following information:

15 (A) The types of data being collected.

16 (B) The purposes for which such data is
17 processed.

18 (C) The categories of such data trans-
19 ferred to third parties.

20 (D) The categories of third parties to
21 which such data is transferred.

22 (E) The identity of each third party to
23 which such data is transferred.

1 (F) How long such data will be retained by
 2 the second-party operator, any third-party oper-
 3 ator, and any third party (as applicable).

4 (G) A description of individuals' privacy
 5 rights under this title.

6 (H) The contact information for the rep-
 7 resentatives for privacy and data security in-
 8 quires of the second-party operator, any third-
 9 party operator, and any third party (as applica-
 10 ble).

11 (3) RESPONSIBILITY OF THIRD-PARTY OPERA-
 12 TORS.—A third-party operator of a program that ap-
 13 pears on a covered internet platform shall, if the
 14 program collects any covered data of a user of the
 15 platform, ensure that the second-party operator of
 16 the platform provides the notification required by
 17 paragraph (1) and that the notification includes the
 18 information required by paragraph (2) with respect
 19 to the program.

20 (c) RIGHT TO RECEIVE PRIVACY POLICY.—

21 (1) IN GENERAL.—A covered entity shall make
 22 publicly and persistently available, in a conspicuous
 23 and readily accessible manner, a privacy policy that
 24 provides a detailed and accurate representation of
 25 the activities of the covered entity with respect to

1 the collection, processing, and transfer of covered
2 data.

3 (2) CONTENTS OF PRIVACY POLICY.—The pri-
4 vacy policy required by paragraph (1) shall include,
5 at a minimum, the following:

6 (A) An easy-to-understand explanation of
7 the policy of the covered entity with respect to
8 the collection, processing, and transfer of cov-
9 ered data (including clear descriptions that
10 avoid technical and legal jargon to the extent
11 practicable).

12 (B) The identity of and contact informa-
13 tion for the covered entity, including the con-
14 tact information for the covered entity's rep-
15 resentative for privacy and data security inquir-
16 ies.

17 (C) Each category of covered data the cov-
18 ered entity collects and the processing purposes
19 for which such data is collected.

20 (D) Whether the covered entity transfers
21 covered data and, if so—

22 (i) each category of service provider or
23 third party to which the covered entity
24 transfers covered data and the purposes

1 for which such data is transferred to each
2 such category; and

3 (ii) the identity of each third party to
4 which the covered entity transfers covered
5 data and the purposes for which such data
6 is transferred to such third party.

7 (E) How long covered data processed by
8 the covered entity will be retained by the cov-
9 ered entity or a third party and a description
10 of the covered entity's data minimization poli-
11 cies.

12 (F) How individuals can exercise the indi-
13 vidual rights described in this title.

14 (G) A description of the covered entity's
15 data security policies.

16 (H) The effective date of the privacy pol-
17 icy.

18 (3) LANGUAGES.—A covered entity shall make
19 the privacy policy required under paragraph (1)
20 available to the public in all of the languages in
21 which the covered entity provides a product or serv-
22 ice or carries out any other activities to which the
23 privacy policy relates.

24 (d) RIGHT TO CONSENT TO MATERIAL CHANGES.—
25 If a material change to the privacy policy of a covered

1 entity required under subsection (c) would weaken privacy
2 protections for covered data, the covered entity may not
3 apply such change to the covered data of an individual
4 that was collected before the change takes effect without
5 obtaining the affirmative express consent of the individual
6 to the change.

7 **SEC. 105. RIGHT TO DELETE.**

8 (a) IN GENERAL.—A covered entity, upon the verified
9 request of an individual, shall—

10 (1) at the option of the individual—

11 (A) delete, or allow the individual to delete,
12 any information in the covered data of the indi-
13 vidual that is processed by the covered entity;
14 or

15 (B) take action to disable or mask the
16 identification of the individual connected to any
17 information in the covered data of the indi-
18 vidual that is processed by the covered entity;

19 (2) inform any service provider or third party
20 to which the covered entity transferred such data of
21 the request of the individual under paragraph (1);
22 and

23 (3) direct the service provider or third party to
24 honor the request.

1 (b) SERVICE PROVIDERS AND THIRD PARTIES.—In
2 the case of a service provider or third party that is in-
3 formed under paragraph (2) of subsection (a) and directed
4 to honor under paragraph (3) of such subsection the re-
5 quest of an individual under paragraph (1) of such sub-
6 section, the service provider or third party shall, in accord-
7 ance with the request, delete the information or take ac-
8 tion to disable or mask the identification of the individual.

9 **SEC. 106. RIGHT TO CORRECT INACCURACIES.**

10 (a) IN GENERAL.—A covered entity, upon the verified
11 request of an individual, shall—

12 (1) correct, or allow the individual to correct,
13 inaccurate or incomplete information in the covered
14 data of the individual that is processed by the cov-
15 ered entity;

16 (2) inform any service provider or third party
17 to which the covered entity transferred such data of
18 the request of the individual under paragraph (1)
19 and of the corrected information; and

20 (3) direct the service provider or third party to
21 honor the request.

22 (b) SERVICE PROVIDERS AND THIRD PARTIES.—In
23 the case of a service provider or third party that is in-
24 formed under paragraph (2) of subsection (a) and directed
25 to honor under paragraph (3) of such subsection the re-

1 quest of an individual under paragraph (1) of such sub-
2 section, the service provider or third party shall, in accord-
3 ance with the request, correct the information.

4 **SEC. 107. RIGHT TO CONTROLS.**

5 (a) SENSE OF CONGRESS.—It is the sense of Con-
6 gress that—

7 (1) the term “privacy policy” is deceptive;

8 (2) such policies are in fact data collection poli-
9 cies; and

10 (3) covered data is the private property of the
11 individual about whom the data has been collected
12 and should be treated as such.

13 (b) REQUIREMENT FOR AFFIRMATIVE EXPRESS CON-
14 SENT FOR COLLECTION, PROCESSING, OR TRANSFER OF
15 COVERED DATA.—

16 (1) IN GENERAL.—A covered entity may not
17 collect, process, or transfer to a third party the cov-
18 ered data of an individual without obtaining the af-
19 firmative express consent of the individual to the col-
20 lection, processing, or transfer through a process es-
21 tablished under the rule issued by the Commission
22 under paragraph (3).

23 (2) RIGHT TO WITHDRAW AFFIRMATIVE EX-
24 PRESS CONSENT.—A covered entity shall permit an
25 individual to withdraw the affirmative express con-

1 sent of the individual to the collection, processing, or
2 transfer to a third party of the covered data of the
3 individual through a process established under the
4 rule issued by the Commission under paragraph (3).

5 (3) RULEMAKING.—

6 (A) IN GENERAL.—Not later than 1 year
7 after the date of the enactment of this Act, the
8 Commission shall issue a rule under section 553
9 of title 5, United States Code, establishing one
10 or more acceptable processes for a covered enti-
11 ty to follow in requesting the affirmative ex-
12 press consent of an individual to the collection,
13 processing, or transfer of the covered data of
14 the individual and in permitting an individual
15 to withdraw such consent.

16 (B) REQUIREMENTS.—The processes es-
17 tablished by the Commission under subpara-
18 graph (A) shall—

19 (i) include clear and conspicuous re-
20 quests for affirmative express consent and
21 consumer-friendly mechanisms to allow an
22 individual to provide and withdraw affirm-
23 ative express consent;

24 (ii) allow an individual to provide and
25 withdraw affirmative express consent—

1 (I) for the collection, processing,
 2 or transfer of some or all (at the op-
 3 tion of the individual) of the covered
 4 data of the individual; and

5 (II) for the transfer of the cov-
 6 ered data of the individual to some or
 7 all (at the option of the individual)
 8 third parties;

9 (iii) allow an individual to view the
 10 status of affirmative express consent pro-
 11 vided or withdrawn;

12 (iv) be privacy protective; and

13 (v) be informed by the Commission's
 14 experience developing and implementing
 15 the National Do Not Call Registry.

16 **SEC. 108. RIGHT TO DATA MINIMIZATION.**

17 (a) IN GENERAL.—A covered entity may not collect,
 18 process, or transfer the covered data of an individual be-
 19 yond what is reasonably necessary, proportionate, and lim-
 20 ited to the purposes for which the individual provides af-
 21 firmative express consent to the collection, processing, or
 22 transfer.

23 (b) RULE OF CONSTRUCTION.—Nothing in sub-
 24 section (a) may be construed to authorize any collection,

1 processing, or transfer of covered data that is prohibited
2 by any other provision of this title.

3 **SEC. 109. RIGHT TO DATA SECURITY.**

4 (a) IN GENERAL.—A covered entity shall establish,
5 implement, and maintain reasonable data security prac-
6 tices to protect the confidentiality, integrity, and accessi-
7 bility of covered data. Such data security practices shall
8 be appropriate to the volume and nature of the covered
9 data at issue.

10 (b) SPECIFIC REQUIREMENTS.—Data security prac-
11 tices required under subsection (a) shall include, at a min-
12 imum, the following:

13 (1) ASSESS VULNERABILITIES.—Identifying
14 and assessing any reasonably foreseeable risks to,
15 and vulnerabilities in, each system maintained by
16 the covered entity that collects, processes, or trans-
17 fers covered data, including unauthorized access to
18 or risks to covered data, human vulnerabilities, ac-
19 cess rights, and use of service providers. Such activi-
20 ties shall include a plan to receive and respond to
21 unsolicited reports of vulnerabilities by entities and
22 individuals.

23 (2) PREVENTIVE AND CORRECTION ACTION.—
24 Taking preventive and corrective action to mitigate
25 any risks or vulnerabilities to covered data identified

1 by the covered entity, which may include imple-
2 menting administrative, technical, or physical safe-
3 guards or changes to data security practices or the
4 architecture, installation, or implementation of net-
5 work or operating software.

6 (3) INFORMATION RETENTION AND DIS-
7 POSAL.—Deleting covered data that is required to be
8 deleted or is no longer necessary for the purpose for
9 which the data was collected unless the individual to
10 whom the data relates provides affirmative express
11 consent to the retention of the data. Such process
12 shall include data hygiene practices to ensure ongo-
13 ing compliance with this paragraph.

14 (4) COMPREHENSIVE DATA SECURITY PRO-
15 GRAM.—Implementation of a comprehensive data se-
16 curity program, including—

17 (A) designation of an employee responsible
18 for data security;

19 (B) training for all employees with access
20 to covered data on how to safeguard covered
21 data and protect individual privacy, and updat-
22 ing that training as necessary; and

23 (C) due diligence with regard to the data
24 security practices of service providers to which
25 the covered entity transfers covered data.

1 **SEC. 110. PROHIBITION OF SERVICE OFFERS CONDITIONED**
2 **ON WAIVERS OF PRIVACY RIGHTS.**

3 A covered entity may not—

4 (1) condition, or effectively condition, provision
5 of the service on agreement by an individual to
6 waive privacy rights guaranteed by law or regula-
7 tion, including this title; or

8 (2) terminate the service or otherwise refuse to
9 provide the service as a direct or indirect con-
10 sequence of the refusal of a user to waive any pri-
11 vacy rights described in this title.

12 **SEC. 111. SCOPE OF COVERAGE.**

13 (a) **GENERAL EXCEPTIONS.**—Notwithstanding any
14 other provision of this title, a covered entity may collect,
15 process, or transfer covered data for any of the following
16 purposes, if the collection, processing, or transfer is rea-
17 sonably necessary, proportionate, and limited to such pur-
18 pose:

19 (1) To initiate or complete a transaction or to
20 fulfill an order or provide a service specifically re-
21 quested by an individual, including associated rou-
22 tine administrative activities such as billing, ship-
23 ping, financial reporting, and accounting.

24 (2) To perform internal system maintenance,
25 diagnostics, product or service management, inven-
26 tory management, or network management.

1 (3) To prevent, detect, or respond to a security
2 incident or trespassing, provide a secure environ-
3 ment, or maintain the safety and security of a prod-
4 uct, service, or individual.

5 (4) To protect against malicious, deceptive,
6 fraudulent, or illegal activity.

7 (5) To comply with a legal obligation or the es-
8 tablishment, exercise, analysis, or defense of legal
9 claims or rights, or as required or specifically au-
10 thorized by law.

11 (6) To comply with a civil, criminal, or regu-
12 latory inquiry, investigation, subpoena, or summons
13 by an Executive agency.

14 (7) To cooperate with an Executive agency or
15 a law enforcement official acting under the authority
16 of an Executive or State agency concerning conduct
17 or activity that the Executive agency or law enforce-
18 ment official reasonably and in good faith believes
19 may violate Federal, State, or local law, or pose a
20 threat to public safety or national security.

21 (8) To address risks to the safety of an indi-
22 vidual or group of individuals, or to ensure customer
23 safety, including by authenticating individuals in
24 order to provide access to large venues open to the
25 public.

1 (9) To effectuate a product recall pursuant to
2 Federal or State law.

3 (10) To conduct public or peer-reviewed sci-
4 entific, historical, or statistical research that—

5 (A) is in the public interest;

6 (B) adheres to all applicable ethics and
7 privacy laws; and

8 (C) is approved, monitored, and governed
9 by an institutional review board or other over-
10 sight entity that meets standards promulgated
11 by the Commission pursuant to section 553 of
12 title 5, United States Code.

13 (11) To transfer covered data to a service pro-
14 vider.

15 (12) For a purpose identified by the Commis-
16 sion pursuant to a regulation promulgated under
17 subsection (b).

18 (b) **ADDITIONAL PURPOSES.**—The Commission may
19 promulgate regulations under section 553 of title 5,
20 United States Code, identifying additional purposes for
21 which a covered entity may collect, process, or transfer
22 covered data and protect individual rights to data privacy
23 in accordance with this title.

1 **SEC. 112. SMALL BUSINESS EXCEPTION.**

2 Sections 103, 104, 105, and 106 do not apply in the
3 case of a person who can establish that, for the 3 pre-
4 ceding calendar years (or for the period during which the
5 person has been in existence if such period is less than
6 3 years)—

7 (1) the average annual gross revenues of the
8 person did not exceed \$50,000,000;

9 (2) on average, the person annually processed
10 the covered data of less than 1,000,000 individuals;

11 (3) the person never employed more than 500
12 individuals at any one time; and

13 (4) the person derived less than 50 percent of
14 the revenues of the person from transferring covered
15 data.

16 **SEC. 113. APPLICATION AND ENFORCEMENT.**

17 (a) GENERAL APPLICATION.—The requirements of
18 this title apply, according to their terms, to—

19 (1) those persons, partnerships, and corpora-
20 tions over which the Commission has authority pur-
21 suant to section 5(a)(2) of the Federal Trade Com-
22 mission Act (15 U.S.C. 45(a)(2)); and

23 (2) notwithstanding sections 4 and 5(a)(2) of
24 such Act (15 U.S.C. 44; 45(a)(2))—

25 (A) common carriers described in such sec-
26 tion 5(a)(2); and

1 (B) organizations not organized to carry
2 on business for their own profit or that of their
3 members.

4 (b) ENFORCEMENT BY THE COMMISSION.—

5 (1) IN GENERAL.—Except as otherwise pro-
6 vided, this title and the regulations prescribed under
7 this title shall be enforced by the Commission under
8 the Federal Trade Commission Act (15 U.S.C. 41 et
9 seq.).

10 (2) UNFAIR OR DECEPTIVE ACTS OR PRAC-
11 TICES.—A violation of this title or a regulation pre-
12 scribed under this title shall be treated as a violation
13 of a rule defining an unfair or deceptive act or prac-
14 tice prescribed under section 18(a)(1)(B) of the Fed-
15 eral Trade Commission Act (15 U.S.C.
16 57a(a)(1)(B)).

17 (3) ACTIONS BY THE COMMISSION.—

18 (A) IN GENERAL.—Except as provided in
19 subparagraph (B) and subsection (a), the Com-
20 mission shall prevent any person from violating
21 this title or a regulation prescribed under this
22 title in the same manner, by the same means,
23 and with the same jurisdiction, powers, and du-
24 ties as though all applicable terms and provi-
25 sions of the Federal Trade Commission Act (15

1 U.S.C. 41 et seq.) were incorporated into and
2 made a part of this title, and any person who
3 violates this title or a regulation prescribed
4 under this title shall be subject to the penalties
5 and entitled to the privileges and immunities
6 provided in the Federal Trade Commission Act.

7 (B) PENALTIES.—

8 (i) IN GENERAL.—Notwithstanding
9 section 5(m) of the Federal Trade Com-
10 mission Act (15 U.S.C. 45(m)), a civil pen-
11 alty recovered for a violation of this title or
12 a regulation prescribed under this title
13 may be in excess of the amounts provided
14 for in that section, if such penalty meets
15 the requirements of this subparagraph.

16 (ii) PENALTY FOR NEGLIGENT VIOLA-
17 TION.—In the case of a person who neg-
18 ligently violates this title or a regulation
19 prescribed under this title, such person
20 shall be liable for a civil penalty that does
21 not exceed \$50 for every individual af-
22 fected by such violation for every day dur-
23 ing which the person is in violation of this
24 title or such regulation as described in this
25 clause.

(iii) PENALTY FOR WILLFUL OR RECKLESS VIOLATION.—In the case of a person who willfully or recklessly violates this title or a regulation prescribed under this title, such person shall be liable for a civil penalty that—

(I) is not less than \$100,000;

and

(II) does not exceed \$1,000 for

every individual affected by such violation for every day during which the person is in violation of this title or such regulation as described in this clause.

(c) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

(1) IN GENERAL.—

(A) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in an act or practice that violates this title or a regulation prescribed under this title, the State, as parens patriae, may bring a civil action on be-

1 half of the residents of the State in a district
2 court of the United States or a State court of
3 appropriate jurisdiction to—

4 (i) enjoin that act or practice;

5 (ii) enforce compliance with this title
6 or such regulation;

7 (iii) obtain damages, statutory dam-
8 ages in the same amount as the penalties
9 that the Commission may obtain under
10 section 5(m) of the Federal Trade Com-
11 mission Act (15 U.S.C. 45(m)) and sub-
12 section (b)(3)(B) of this section, restitue-
13 tion, or other compensation on behalf of
14 residents of the State; or

15 (iv) obtain such other relief as the
16 court may consider to be appropriate.

17 (B) NOTICE.—

18 (i) IN GENERAL.—Before filing an ac-
19 tion under subparagraph (A), the attorney
20 general of the State involved shall provide
21 to the Commission—

22 (I) written notice of that action;

23 and

24 (II) a copy of the complaint for
25 that action.

1 (ii) EXEMPTION.—

2 (I) IN GENERAL.—Clause (i)
3 does not apply with respect to the fil-
4 ing of an action by an attorney gen-
5 eral of a State under this paragraph
6 if the attorney general of the State
7 determines that it is not feasible to
8 provide the notice described in that
9 clause before the filing of the action.

10 (II) NOTIFICATION.—In an ac-
11 tion described in subclause (I), the at-
12 torney general of a State shall provide
13 notice and a copy of the complaint to
14 the Commission at the same time as
15 the attorney general files the action.

16 (2) INTERVENTION.—

17 (A) IN GENERAL.—On receiving notice
18 under paragraph (1)(B), the Commission shall
19 have the right to intervene in the action that is
20 the subject of the notice.

21 (B) EFFECT OF INTERVENTION.—If the
22 Commission intervenes in an action under para-
23 graph (1), it shall have the right—

24 (i) to be heard with respect to any
25 matter that arises in that action; and

1 (ii) to file a petition for appeal.

2 (3) CONSTRUCTION.—For purposes of bringing
3 any civil action under paragraph (1), nothing in this
4 title shall be construed to prevent an attorney gen-
5 eral of a State from exercising the powers conferred
6 on the attorney general by the laws of that State
7 to—

8 (A) conduct investigations;

9 (B) administer oaths or affirmations; or

10 (C) compel the attendance of witnesses or
11 the production of documentary and other evi-
12 dence.

13 (4) ACTIONS BY THE COMMISSION.—In any
14 case in which an action is instituted by or on behalf
15 of the Commission for violation of this title or a reg-
16 ulation prescribed under this title, no State may,
17 during the pendency of that action, institute an ac-
18 tion under paragraph (1) against any defendant
19 named in the complaint in the action instituted by
20 or on behalf of the Commission for that violation.

21 (5) VENUE; SERVICE OF PROCESS.—

22 (A) VENUE.—Any action brought under
23 paragraph (1) may be brought in—

24 (i) a district court of the United
25 States that meets applicable requirements

1 relating to venue under section 1391 of
2 title 28, United States Code; or

3 (ii) a State court of competent juris-
4 diction.

5 (B) SERVICE OF PROCESS.—In an action
6 brought under paragraph (1) in a district court
7 of the United States, process may be served
8 wherever the defendant—

9 (i) is an inhabitant; or

10 (ii) may be found.

11 **SEC. 114. STATE PRIVACY PROTECTIONS.**

12 Nothing in this title shall preempt any State law, reg-
13 ulation, or other requirement having the force or effect
14 of law that is more protective of the privacy of individuals
15 than the requirements of this title.

16 **SEC. 115. SEVERABILITY.**

17 If any provision of this title or the application of a
18 provision of this title to any person or circumstance is held
19 to be invalid or unconstitutional, the remainder of this
20 title, or the application of such provision to any other per-
21 son or circumstance, shall not be affected.

22 **SEC. 116. DEFINITIONS.**

23 In this title:

24 (1) AFFIRMATIVE EXPRESS CONSENT.—

1 (A) IN GENERAL.—The term “affirmative
2 express consent” means an affirmative act by
3 an individual that clearly communicates the in-
4 dividual’s authorization for an act or practice,
5 in response to a specific request that meets the
6 requirements of subparagraph (B).

7 (B) REQUEST REQUIREMENTS.—The re-
8 quirements of this subparagraph with respect to
9 a request from a covered entity to an individual
10 are the following:

11 (i) The request is provided to the indi-
12 vidual in a standalone disclosure.

13 (ii) The request includes a description
14 of each act or practice for which the indi-
15 vidual’s consent is sought and—

16 (I) clearly distinguishes between
17 an act or practice which is necessary
18 to fulfill a request of the individual
19 and an act or practice which is for an-
20 other purpose; and

21 (II) is written in easy-to-under-
22 stand language and includes a promi-
23 nent heading that would enable a rea-
24 sonable individual to identify and un-
25 derstand the act or practice.

1 (iii) The request clearly explains the
2 individual's applicable rights related to
3 consent.

4 (C) EXPRESS CONSENT REQUIRED.—A
5 covered entity may not infer that an individual
6 has provided affirmative express consent to an
7 act or practice from the inaction of the indi-
8 vidual or the individual's continued use of a
9 service or product provided by the covered enti-
10 ty.

11 (D) PRIOR CONSENT REQUIRED.—In the
12 case of any requirement of this title for a cov-
13 ered entity to obtain affirmative express consent
14 for an act or practice, the covered entity shall
15 obtain such consent before engaging in the act
16 or practice.

17 (2) COLLECT; COLLECTION.—The terms “col-
18 lect” and “collection” mean, with respect to the cov-
19 ered data of an individual, buying, renting, gath-
20 ering, obtaining, receiving, accessing, or otherwise
21 acquiring such data by any means, including by pas-
22 sively or actively observing the individual's behavior.

23 (3) COMMISSION.—The term “Commission”
24 means the Federal Trade Commission.

1 (4) CONNECTED DEVICE.—The term “con-
2 nected device” means a physical object that—

3 (A) is capable of connecting to the inter-
4 net, either directly or indirectly through a net-
5 work, to communicate information at the direc-
6 tion of an individual; and

7 (B) has computer processing capabilities
8 for collecting, sending, receiving, or analyzing
9 data.

10 (5) CONTROL.—The term “control” means,
11 with respect to an entity—

12 (A) ownership of, or the power to vote,
13 more than 50 percent of the outstanding shares
14 of any class of voting security of the entity;

15 (B) control in any manner over the election
16 of a majority of the directors of the entity (or
17 of individuals exercising similar functions); or

18 (C) the power to exercise a controlling in-
19 fluence over the management of the entity.

20 (6) COVERED DATA.—

21 (A) IN GENERAL.—The term “covered
22 data” means information that identifies or is
23 linked or reasonably linkable to an individual or
24 a connected device that is linked or reasonably
25 linkable to an individual.

1 (B) LINKED OR REASONABLY LINKABLE.—

2 For purposes of subparagraph (A), information
 3 held by a covered entity is linked or reasonably
 4 linkable to an individual or a connected device
 5 if, as a practical matter, it can be used on its
 6 own or in combination with other information
 7 held by, or readily accessible to, the covered en-
 8 tity to identify such individual or such device.

9 (C) EXCLUSIONS.—Such term does not in-
 10 clude—

11 (i) aggregated data;

12 (ii) de-identified data;

13 (iii) data of an individual processed by
 14 the covered entity in the capacity of the
 15 covered entity as the employer of the indi-
 16 vidual; or

17 (iv) publicly available information.

18 (7) COVERED ENTITY.—The term “covered en-
 19 tity” means any person who—

20 (A) collects, processes, or transfers covered
 21 data; and

22 (B) determines the purposes and means of
 23 such collection, processing, or transfer.

24 (8) COVERED INTERNET PLATFORM.—

1 (A) IN GENERAL.—The term “covered
2 internet platform” means any public-facing
3 website, internet application, or mobile applica-
4 tion, including a social network site, video shar-
5 ing service, search engine, or content aggrega-
6 tion service.

7 (B) EXCLUSION.—Such term does not in-
8 clude a platform that is operated for the sole
9 purpose of conducting research that is not con-
10 ducted for profit, either directly or indirectly.

11 (9) DELETE.—The term “delete” means to re-
12 move or destroy information such that it is not
13 maintained in human or machine-readable form and
14 cannot be retrieved or utilized in such form in the
15 normal course of business.

16 (10) EXECUTIVE AGENCY.—The term “Execu-
17 tive agency” has the meaning given such term in
18 section 105 of title 5, United States Code.

19 (11) INDIVIDUAL.—The term “individual”
20 means a natural person residing in the United
21 States, however identified, including by any unique
22 identifier.

23 (12) MATERIAL.—The term “material” means,
24 with respect to an act, practice, or representation of
25 a covered entity (including a representation made by

1 the covered entity in a privacy policy or similar dis-
2 closure to individuals), that such act, practice, or
3 representation is likely to affect an individual's deci-
4 sion or conduct regarding a product or service.

5 (13) PROCESS.—The term “process” means to
6 perform any operation or set of operations on cov-
7 ered data, including collection, analysis, organiza-
8 tion, structuring, retaining, using, transferring, or
9 otherwise handling covered data.

10 (14) PROCESSING PURPOSE.—The term “proc-
11 essing purpose” means an adequately specific and
12 granular reason for which a covered entity processes
13 covered data that clearly describes the processing ac-
14 tivity.

15 (15) PROGRAM.—The term “program” means,
16 with respect to a covered internet platform, any pro-
17 gram that appears on the platform, including a pro-
18 gram that delivers advertisements to users of the
19 platform and a program used to log into the plat-
20 form.

21 (16) PUBLICLY AVAILABLE INFORMATION.—
22 The term “publicly available information” means in-
23 formation that is available to the general public, in-
24 cluding—

1 (A) any information to which the source
2 allows access by anyone upon request; and

3 (B) any information that a covered entity
4 has a reasonable basis to believe is lawfully
5 made available to the general public from Fed-
6 eral, State, or local government records, widely
7 distributed media, or disclosures to the general
8 public that are required to be made by Federal,
9 State, or local law.

10 (17) RESEARCH.—The term “research” means
11 the scientific analysis of information, including cov-
12 ered data, by a covered entity or those with whom
13 the covered entity is cooperating or others acting at
14 the direction or on behalf of the covered entity, that
15 is conducted for the primary purpose of advancing
16 scientific knowledge and may be for the commercial
17 benefit of the covered entity.

18 (18) SECOND-PARTY OPERATOR.—The term
19 “second-party operator” means the operator of a
20 covered internet platform with which a user intends
21 to connect, but does not include the operator of a
22 program that appears on the platform (if the oper-
23 ator of the program is different from the operator
24 of the platform).

1 (19) SERVICE PROVIDER.—The term “service
2 provider” means, with respect to a set of covered
3 data, a covered entity that collects, processes, or
4 transfers such covered data for the purpose of per-
5 forming one or more services or functions on behalf
6 of, and at the direction of, another covered entity
7 that—

8 (A) is not related to the covered entity pro-
9 viding the service or function by common own-
10 ership or corporate control; and

11 (B) does not share common branding with
12 the covered entity providing the service or func-
13 tion.

14 (20) STATE.—The term “State” means each
15 State of the United States, the District of Columbia,
16 each commonwealth, territory, or possession of the
17 United States, and each federally recognized Indian
18 Tribe.

19 (21) THIRD PARTY.—The term “third party”
20 means with respect to a set of covered data, a cov-
21 ered entity—

22 (A) that is not a service provider with re-
23 spect to such covered data; and

24 (B) that received such covered data from
25 another covered entity—

1 (i) that is not related to the covered
 2 entity by common ownership or corporate
 3 control; and

4 (ii) that does not share common
 5 branding with the covered entity.

6 (22) **THIRD-PARTY OPERATOR.**—The term
 7 “third-party operator” means the operator of a pro-
 8 gram that appears on a covered internet platform (if
 9 the operator of the program is different from the op-
 10 erator of the platform).

11 (23) **TRANSFER.**—The term “transfer” means,
 12 with respect to covered data, to disclose, release,
 13 share, disseminate, make available, or license such
 14 data, in writing, electronically, or by any other
 15 means, for consideration of any kind or for a com-
 16 mercial purpose.

17 **SEC. 117. EFFECTIVE DATE.**

18 This title shall take effect on the date that is 6
 19 months after the date of the enactment of this Act.

20 **TITLE II—DO NOT TRACK**

21 **SEC. 201. SHORT TITLE.**

22 This title may be cited as the “Do Not Track Act”.

23 **SEC. 202. ESTABLISHMENT OF DO NOT TRACK SYSTEM.**

24 (a) **IN GENERAL.**—Not later than 6 months after the
 25 date of the enactment of this Act, the Commission shall

1 implement and enforce a Do Not Track (DNT) system,
2 including the program described in subsection (b), to pro-
3 tect consumers from unwanted online data harvesting and
4 targeted advertising.

5 (b) DO NOT TRACK PROGRAM.—As part of the Do
6 Not Track system required under this section, the Com-
7 mission shall designate the DNT signal and make avail-
8 able on the public website of the Commission a simple pro-
9 gram that—

10 (1) can be downloaded to any common con-
11 nected device;

12 (2) sends the DNT signal to every covered
13 internet platform (except for a covered internet plat-
14 form designated under paragraph (3)) to which the
15 device connects each time the device connects to the
16 platform; and

17 (3) permits the user of the device to designate
18 covered internet platforms to which the DNT signal
19 should not be sent, but does not exempt any covered
20 internet platform from receiving the signal if the
21 platform is not so designated.

22 (c) OTHER DO NOT TRACK SYSTEMS.—Nothing in
23 this title may be construed to prohibit the operator of any
24 web browser or similar interface or a connected device de-
25 signer or manufacturer from offering a program that

1 sends the DNT signal to covered internet platforms, if the
2 program permits users to designate covered internet plat-
3 forms to which the DNT signal should not be sent.

4 (d) RULEMAKING AUTHORITY.—The Commission
5 may promulgate regulations, in accordance with section
6 553 of title 5, United States Code, to carry out this sec-
7 tion.

8 **SEC. 203. DO NOT TRACK: REQUIREMENTS FOR OPERA-**
9 **TORS; PROHIBITED ACTS.**

10 (a) REQUIREMENTS.—

11 (1) SEARCH FOR DNT SIGNAL.—When a con-
12 nected device connects to a covered internet plat-
13 form—

14 (A) the second-party operator of the plat-
15 form shall ensure that the platform searches for
16 the DNT signal; and

17 (B) the third-party operator of any pro-
18 gram that appears on the platform shall ensure
19 that the program searches for the DNT signal.

20 (2) MANDATORY NOTIFICATION.—

21 (A) IN GENERAL.—Subject to subpara-
22 graph (B), if a second-party operator of a cov-
23 ered internet platform collects more data from
24 a user of the platform than is necessary to op-
25 erate the platform, or if a third-party operator

1 of a program that appears on the platform col-
2 lects more data from a user of the platform
3 than is necessary to operate the platform, the
4 second-party operator or third-party operator,
5 respectively, shall, through a pop-up notifica-
6 tion, provide any user whose connected device is
7 not sending the DNT signal with—

8 (i) notice of the policy of the platform
9 or program of collecting data beyond what
10 is necessary to operate the platform;

11 (ii) notice of the protections from data
12 collection and targeted advertising avail-
13 able to users under this title;

14 (iii) notice that the user may, through
15 the public website of the Commission,
16 download the Do Not Track program de-
17 scribed in section 202(b), including a link
18 to such website; and

19 (iv) notice that the user may be able
20 to activate the DNT signal through the
21 user's device or browser.

22 (B) NUMBER AND TIMING.—A second-
23 party operator or third-party operator, respec-
24 tively, shall provide the notification required by
25 subparagraph (A)—

1 (i) the first time a connected device
 2 connects to the covered internet platform;
 3 and

4 (ii) unless the user of the connected
 5 device opts out of receiving the notification
 6 required by subparagraph (A), at least
 7 every 30th time the connected device con-
 8 nects to the covered internet platform.

9 (C) COLLECTION OF DATA FOR TARGETED
 10 ADVERTISING.—For purposes of this para-
 11 graph, the second-party operator of a covered
 12 internet platform, or the third-party operator of
 13 a program that appears on the platform, that
 14 collects data for the purpose of designing or
 15 displaying advertisements for targeted adver-
 16 tising shall be considered to be collecting more
 17 data than is necessary to operate the platform.

18 (b) PROHIBITION ON DATA COLLECTION AND TAR-
 19 GETED ADVERTISING.—

20 (1) SECOND-PARTY OPERATORS.—Subject to
 21 paragraph (3), it shall be unlawful for a second-
 22 party operator of a covered internet platform that
 23 receives the DNT signal from the connected device
 24 of a user to—

1 (A) collect any data (other than such data
2 as is necessary to operate the platform) from
3 the user;

4 (B) use any data collected from the user
5 for a secondary purpose, including for the pur-
6 pose of targeted advertising; or

7 (C) transfer any data collected from the
8 user to a third party, unless the user provides
9 affirmative express consent to the transfer of
10 data in a manner that demonstrates the user's
11 intent for the second-party operator to be an
12 intermediary between the user and the third
13 party.

14 (2) THIRD-PARTY OPERATORS.—

15 (A) IN GENERAL.—It shall be unlawful for
16 a third-party operator of a program that re-
17 ceives the DNT signal from the connected de-
18 vice of a user of a covered internet platform on
19 which the program appears to collect any data
20 from the user, other than, subject to subpara-
21 graph (B), data collected for the purpose of
22 analyzing how or whether the user engaged
23 with the program.

24 (B) LIMITATIONS ON COLLECTION OF
25 DATA FOR ENGAGEMENT ANALYTICS.—Data

1 collected for the purpose of analyzing how or
2 whether the user engaged with the program, as
3 described in subparagraph (A)—

4 (i) may only be collected in a de-iden-
5 tified manner; and

6 (ii) may not be used to create or con-
7 tribute to a profile of the user.

8 (3) EXCEPTION FOR COMPLEMENTARY SERV-
9 ICES.—Notwithstanding paragraph (1), a second-
10 party operator of a covered internet platform may
11 collect additional data from a user beyond what is
12 necessary for the operation of the platform if the ad-
13 ditional data is necessary for the operation of a dif-
14 ferent covered internet platform that is—

15 (A) both owned and operated by the sec-
16 ond-party operator;

17 (B) designed to complement the covered
18 internet platform accessed by the user; and

19 (C) branded as a complementary covered
20 internet platform to the covered internet plat-
21 form accessed by the user.

22 (c) INTERFERING WITH DNT SIGNAL.—It shall be
23 unlawful for any person to—

24 (1) block or impede the ability of a covered
25 internet platform, or a program that appears on a

1 covered internet platform, to receive the DNT sig-
2 nal; or

3 (2) block or impede the ability of a connected
4 device to send the DNT signal.

5 (d) DISCRIMINATION BASED ON DNT PREF-
6 ERENCES.—It shall be unlawful for a second-party oper-
7 ator of a covered internet platform to—

8 (1) deny a user access to, or service from, the
9 platform on the basis of receiving the DNT signal
10 from the user; or

11 (2) provide a user from whom the platform re-
12 ceives the DNT signal with a different level of access
13 or service than the level of access or service provided
14 to a user from whom the platform does not receive
15 the DNT signal.

16 **SEC. 204. SCOPE OF COVERAGE.**

17 (a) GENERAL EXCEPTIONS.—Notwithstanding any
18 other provision of this title, a covered entity may collect,
19 process, or transfer covered data for any of the following
20 purposes, if the collection, processing, or transfer is rea-
21 sonably necessary, proportionate, and limited to such pur-
22 pose:

23 (1) To initiate or complete a transaction or to
24 fulfill an order or provide a service specifically re-
25 quested by an individual, including associated rou-

1 tine administrative activities such as billing, ship-
2 ping, financial reporting, and accounting.

3 (2) To perform internal system maintenance,
4 diagnostics, product or service management, inven-
5 tory management, or network management.

6 (3) To prevent, detect, or respond to a security
7 incident or trespassing, provide a secure environ-
8 ment, or maintain the safety and security of a prod-
9 uct, service, or individual.

10 (4) To protect against malicious, deceptive,
11 fraudulent, or illegal activity.

12 (5) To comply with a legal obligation or the es-
13 tablishment, exercise, analysis, or defense of legal
14 claims or rights, or as required or specifically au-
15 thorized by law.

16 (6) To comply with a civil, criminal, or regu-
17 latory inquiry, investigation, subpoena, or summons
18 by an Executive agency.

19 (7) To cooperate with an Executive agency or
20 a law enforcement official acting under the authority
21 of an Executive or State agency concerning conduct
22 or activity that the Executive agency or law enforce-
23 ment official reasonably and in good faith believes
24 may violate Federal, State, or local law, or pose a
25 threat to public safety or national security.

1 (8) To address risks to the safety of an indi-
2 vidual or group of individuals, or to ensure customer
3 safety, including by authenticating individuals in
4 order to provide access to large venues open to the
5 public.

6 (9) To effectuate a product recall pursuant to
7 Federal or State law.

8 (10) To conduct public or peer-reviewed sci-
9 entific, historical, or statistical research that—

10 (A) is in the public interest;

11 (B) adheres to all applicable ethics and
12 privacy laws; and

13 (C) is approved, monitored, and governed
14 by an institutional review board or other over-
15 sight entity that meets standards promulgated
16 by the Commission pursuant to section 553 of
17 title 5, United States Code.

18 (11) To transfer covered data to a service pro-
19 vider.

20 (12) For a purpose identified by the Commis-
21 sion pursuant to a regulation promulgated under
22 subsection (b).

23 (b) ADDITIONAL PURPOSES.—The Commission may
24 promulgate regulations under section 553 of title 5,
25 United States Code, identifying additional purposes for

1 which a covered entity may collect, process, or transfer
2 covered data and protect individual rights to data privacy
3 in accordance with this title.

4 **SEC. 205. APPLICATION AND ENFORCEMENT.**

5 (a) GENERAL APPLICATION.—The requirements of
6 this title apply, according to their terms, to—

7 (1) those persons, partnerships, and corpora-
8 tions over which the Commission has authority pur-
9 suant to section 5(a)(2) of the Federal Trade Com-
10 mission Act (15 U.S.C. 45(a)(2)); and

11 (2) notwithstanding sections 4 and 5(a)(2) of
12 such Act (15 U.S.C. 44; 45(a)(2))—

13 (A) common carriers described in such sec-
14 tion 5(a)(2); and

15 (B) organizations not organized to carry
16 on business for their own profit or that of their
17 members.

18 (b) ENFORCEMENT BY THE COMMISSION.—

19 (1) IN GENERAL.—Except as otherwise pro-
20 vided, this title and the regulations prescribed under
21 this title shall be enforced by the Commission under
22 the Federal Trade Commission Act (15 U.S.C. 41 et
23 seq.).

24 (2) UNFAIR OR DECEPTIVE ACTS OR PRAC-
25 TICES.—A violation of this title or a regulation pre-

scribed under this title shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(3) ACTIONS BY THE COMMISSION.—

(A) IN GENERAL.—Except as provided in subparagraph (B) and subsection (a), the Commission shall prevent any person from violating this title or a regulation prescribed under this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title, and any person who violates this title or a regulation prescribed under this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(B) PENALTIES.—

(i) IN GENERAL.—Notwithstanding section 5(m) of the Federal Trade Commission Act (15 U.S.C. 45(m)), a civil penalty recovered for a violation of this title or

1 a regulation prescribed under this title
2 may be in excess of the amounts provided
3 for in that section, if such penalty meets
4 the requirements of this subparagraph.

5 (ii) PENALTY FOR NEGLIGENT VIOLA-
6 TION.—In the case of a person who neg-
7 ligently violates this title or a regulation
8 prescribed under this title, such person
9 shall be liable for a civil penalty that does
10 not exceed \$50 for every individual af-
11 fected by such violation for every day dur-
12 ing which the person is in violation of this
13 title or such regulation as described in this
14 clause.

15 (iii) PENALTY FOR WILLFUL OR
16 RECKLESS VIOLATION.—In the case of a
17 person who willfully or recklessly violates
18 this title or a regulation prescribed under
19 this title, such person shall be liable for a
20 civil penalty that—

21 (I) is not less than \$100,000;

22 and

23 (II) does not exceed \$1,000 for
24 every individual affected by such vio-
25 lation for every day during which the

1 person is in violation of this title or
2 such regulation as described in this
3 clause.

4 (c) ENFORCEMENT BY STATE ATTORNEYS GEN-
5 ERAL.—

6 (1) IN GENERAL.—

7 (A) CIVIL ACTIONS.—In any case in which
8 the attorney general of a State has reason to
9 believe that an interest of the residents of that
10 State has been or is threatened or adversely af-
11 fected by the engagement of any person in an
12 act or practice that violates this title or a regu-
13 lation prescribed under this title, the State, as
14 parens patriae, may bring a civil action on be-
15 half of the residents of the State in a district
16 court of the United States or a State court of
17 appropriate jurisdiction to—

18 (i) enjoin that act or practice;

19 (ii) enforce compliance with this title
20 or such regulation;

21 (iii) obtain damages, statutory dam-
22 ages in the same amount as the penalties
23 that the Commission may obtain under
24 section 5(m) of the Federal Trade Com-
25 mission Act (15 U.S.C. 45(m)) and sub-

1 section (b)(3)(B) of this section, restitu-
2 tion, or other compensation on behalf of
3 residents of the State; or

4 (iv) obtain such other relief as the
5 court may consider to be appropriate.

6 (B) NOTICE.—

7 (i) IN GENERAL.—Before filing an ac-
8 tion under subparagraph (A), the attorney
9 general of the State involved shall provide
10 to the Commission—

11 (I) written notice of that action;

12 and

13 (II) a copy of the complaint for
14 that action.

15 (ii) EXEMPTION.—

16 (I) IN GENERAL.—Clause (i)
17 does not apply with respect to the fil-
18 ing of an action by an attorney gen-
19 eral of a State under this paragraph
20 if the attorney general of the State
21 determines that it is not feasible to
22 provide the notice described in that
23 clause before the filing of the action.

24 (II) NOTIFICATION.—In an ac-
25 tion described in subclause (I), the at-

1 torney general of a State shall provide
2 notice and a copy of the complaint to
3 the Commission at the same time as
4 the attorney general files the action.

5 (2) INTERVENTION.—

6 (A) IN GENERAL.—On receiving notice
7 under paragraph (1)(B), the Commission shall
8 have the right to intervene in the action that is
9 the subject of the notice.

10 (B) EFFECT OF INTERVENTION.—If the
11 Commission intervenes in an action under para-
12 graph (1), it shall have the right—

13 (i) to be heard with respect to any
14 matter that arises in that action; and

15 (ii) to file a petition for appeal.

16 (3) CONSTRUCTION.—For purposes of bringing
17 any civil action under paragraph (1), nothing in this
18 title shall be construed to prevent an attorney gen-
19 eral of a State from exercising the powers conferred
20 on the attorney general by the laws of that State
21 to—

22 (A) conduct investigations;

23 (B) administer oaths or affirmations; or

1 (C) compel the attendance of witnesses or
2 the production of documentary and other evi-
3 dence.

4 (4) ACTIONS BY THE COMMISSION.—In any
5 case in which an action is instituted by or on behalf
6 of the Commission for violation of this title or a reg-
7 ulation prescribed under this title, no State may,
8 during the pendency of that action, institute an ac-
9 tion under paragraph (1) against any defendant
10 named in the complaint in the action instituted by
11 or on behalf of the Commission for that violation.

12 (5) VENUE; SERVICE OF PROCESS.—

13 (A) VENUE.—Any action brought under
14 paragraph (1) may be brought in—

15 (i) a district court of the United
16 States that meets applicable requirements
17 relating to venue under section 1391 of
18 title 28, United States Code; or

19 (ii) a State court of competent juris-
20 diction.

21 (B) SERVICE OF PROCESS.—In an action
22 brought under paragraph (1) in a district court
23 of the United States, process may be served
24 wherever the defendant—

25 (i) is an inhabitant; or

1 (ii) may be found.

2 **SEC. 206. STATE PRIVACY PROTECTIONS.**

3 Nothing in this title shall preempt any State law, reg-
4 ulation, or other requirement having the force or effect
5 of law that is more protective of the privacy of individuals
6 than the requirements of this title.

7 **SEC. 207. SEVERABILITY.**

8 If any provision of this title or the application of a
9 provision of this title to any person or circumstance is held
10 to be invalid or unconstitutional, the remainder of this
11 title, or the application of such provision to any other per-
12 son or circumstance, shall not be affected.

13 **SEC. 208. DEFINITIONS.**

14 In this title:

15 (1) AFFIRMATIVE EXPRESS CONSENT.—

16 (A) IN GENERAL.—The term “affirmative
17 express consent” means an affirmative act by
18 an individual that clearly communicates the in-
19 dividual’s authorization for an act or practice,
20 in response to a specific request that meets the
21 requirements of subparagraph (B).

22 (B) REQUEST REQUIREMENTS.—The re-
23 quirements of this subparagraph with respect to
24 a request from a covered entity to an individual
25 are the following:

1 (i) The request is provided to the indi-
2 vidual in a standalone disclosure.

3 (ii) The request includes a description
4 of each act or practice for which the indi-
5 vidual's consent is sought and—

6 (I) clearly distinguishes between
7 an act or practice which is necessary
8 to fulfill a request of the individual
9 and an act or practice which is for an-
10 other purpose; and

11 (II) is written in easy-to-under-
12 stand language and includes a promi-
13 nent heading that would enable a rea-
14 sonable individual to identify and un-
15 derstand the act or practice.

16 (iii) The request clearly explains the
17 individual's applicable rights related to
18 consent.

19 (C) EXPRESS CONSENT REQUIRED.—A
20 covered entity may not infer that an individual
21 has provided affirmative express consent to an
22 act or practice from the inaction of the indi-
23 vidual or the individual's continued use of a
24 service or product provided by the covered enti-
25 ty.

1 (D) PRIOR CONSENT REQUIRED.—In the
2 case of any requirement of this title for a cov-
3 ered entity to obtain affirmative express consent
4 for an act or practice, the covered entity shall
5 obtain such consent before engaging in the act
6 or practice.

7 (2) COLLECT; COLLECTION.—The terms “col-
8 lect” and “collection” mean, with respect to the cov-
9 ered data of an individual, buying, renting, gath-
10 ering, obtaining, receiving, accessing, or otherwise
11 acquiring such data by any means, including by pas-
12 sively or actively observing the individual’s behavior.

13 (3) COMMISSION.—The term “Commission”
14 means the Federal Trade Commission.

15 (4) CONNECTED DEVICE.—The term “con-
16 nected device” means a physical object that—

17 (A) is capable of connecting to the inter-
18 net, either directly or indirectly through a net-
19 work, to communicate information at the direc-
20 tion of an individual; and

21 (B) has computer processing capabilities
22 for collecting, sending, receiving, or analyzing
23 data.

24 (5) CONTROL.—The term “control” means,
25 with respect to an entity—

1 (A) ownership of, or the power to vote,
2 more than 50 percent of the outstanding shares
3 of any class of voting security of the entity;

4 (B) control in any manner over the election
5 of a majority of the directors of the entity (or
6 of individuals exercising similar functions); or

7 (C) the power to exercise a controlling in-
8 fluence over the management of the entity.

9 (6) COVERED DATA.—

10 (A) IN GENERAL.—The term “covered
11 data” means information that identifies or is
12 linked or reasonably linkable to an individual or
13 a connected device that is linked or reasonably
14 linkable to an individual.

15 (B) LINKED OR REASONABLY LINKABLE.—
16 For purposes of subparagraph (A), information
17 held by a covered entity is linked or reasonably
18 linkable to an individual or a connected device
19 if, as a practical matter, it can be used on its
20 own or in combination with other information
21 held by, or readily accessible to, the covered en-
22 tity to identify such individual or such device.

23 (C) EXCLUSIONS.—Such term does not in-
24 clude—

25 (i) aggregated data;

- 1 (ii) de-identified data;
- 2 (iii) data of an individual processed by
- 3 the covered entity in the capacity of the
- 4 covered entity as the employer of the indi-
- 5 vidual; or
- 6 (iv) publicly available information.

7 (7) COVERED ENTITY.—The term “covered en-

8 tity” means any person who—

9 (A) collects, processes, or transfers covered

10 data; and

11 (B) determines the purposes and means of

12 such collection, processing, or transfer.

13 (8) COVERED INTERNET PLATFORM.—

14 (A) IN GENERAL.—The term “covered

15 internet platform” means any public-facing

16 website, internet application, or mobile applica-

17 tion, including a social network site, video shar-

18 ing service, search engine, or content aggrega-

19 tion service.

20 (B) EXCLUSION.—Such term does not in-

21 clude a platform that is operated for the sole

22 purpose of conducting research that is not con-

23 ducted for profit, either directly or indirectly.

24 (9) DNT SIGNAL.—The term “DNT signal”

25 means a signal sent by a connected device, such as

1 the hypertext transfer protocol developed by the
2 World Wide Web Consortium Working Group on
3 Tracking Preference Expression, that is designated
4 by the Commission for purposes of the Do Not
5 Track program required under section 202(b).

6 (10) EXECUTIVE AGENCY.—The term “Execu-
7 tive agency” has the meaning given such term in
8 section 105 of title 5, United States Code.

9 (11) INDIVIDUAL.—The term “individual”
10 means a natural person residing in the United
11 States, however identified, including by any unique
12 identifier.

13 (12) PROCESS.—The term “process” means to
14 perform any operation or set of operations on cov-
15 ered data, including collection, analysis, organiza-
16 tion, structuring, retaining, using, transferring, or
17 otherwise handling covered data.

18 (13) PROGRAM.—The term “program” means,
19 with respect to a covered internet platform, any pro-
20 gram that appears on the platform, including a pro-
21 gram that delivers advertisements to users of the
22 platform and a program used to log into the plat-
23 form.

24 (14) PUBLICLY AVAILABLE INFORMATION.—
25 The term “publicly available information” means in-

1 formation that is available to the general public, in-
2 cluding—

3 (A) any information to which the source
4 allows access by anyone upon request; and

5 (B) any information that a covered entity
6 has a reasonable basis to believe is lawfully
7 made available to the general public from Fed-
8 eral, State, or local government records, widely
9 distributed media, or disclosures to the general
10 public that are required to be made by Federal,
11 State, or local law.

12 (15) RESEARCH.—The term “research” means
13 the scientific analysis of information, including cov-
14 ered data, by a covered entity or those with whom
15 the covered entity is cooperating or others acting at
16 the direction or on behalf of the covered entity, that
17 is conducted for the primary purpose of advancing
18 scientific knowledge and may be for the commercial
19 benefit of the covered entity.

20 (16) SECOND-PARTY OPERATOR.—The term
21 “second-party operator” means the operator of a
22 covered internet platform with which a user intends
23 to connect, but does not include the operator of a
24 program that appears on the platform (if the oper-

1 ator of the program is different from the operator
2 of the platform).

3 (17) SERVICE PROVIDER.—The term “service
4 provider” means, with respect to a set of covered
5 data, a covered entity that collects, processes, or
6 transfers such covered data for the purpose of per-
7 forming one or more services or functions on behalf
8 of, and at the direction of, another covered entity
9 that—

10 (A) is not related to the covered entity pro-
11 viding the service or function by common own-
12 ership or corporate control; and

13 (B) does not share common branding with
14 the covered entity providing the service or func-
15 tion.

16 (18) STATE.—The term “State” means each
17 State of the United States, the District of Columbia,
18 each commonwealth, territory, or possession of the
19 United States, and each federally recognized Indian
20 Tribe.

21 (19) TARGETED ADVERTISING.—

22 (A) IN GENERAL.—The term “targeted ad-
23 vertising” means a form of advertising in which
24 advertisements are displayed to a user based on
25 the user’s traits, information from a profile

1 about the user that is created for the purpose
2 of selling advertisements, or the user’s previous
3 online or offline behavior.

4 (B) LIMITATION.—Such term does not in-
5 clude contextual advertising, including—

6 (i) advertising that is directed to a
7 user based on the content of the covered
8 internet platform that the user is con-
9 nected to; or

10 (ii) advertising that is directed to a
11 user by the second-party operator of a cov-
12 ered internet platform, or by the third-
13 party operator of a program that appears
14 on the platform, based on the search terms
15 that the user used to arrive at the plat-
16 form.

17 (20) THIRD PARTY.—The term “third party”
18 means with respect to a set of covered data, a cov-
19 ered entity—

20 (A) that is not a service provider with re-
21 spect to such covered data; and

22 (B) that received such covered data from
23 another covered entity—

1 (i) that is not related to the covered
2 entity by common ownership or corporate
3 control; and

4 (ii) that does not share common
5 branding with the covered entity.

6 (21) THIRD-PARTY OPERATOR.—The term
7 “third-party operator” means the operator of a pro-
8 gram that appears on a covered internet platform (if
9 the operator of the program is different from the op-
10 erator of the platform).

11 (22) TRANSFER.—The term “transfer” means,
12 with respect to covered data, to disclose, release,
13 share, disseminate, make available, or license such
14 data, in writing, electronically, or by any other
15 means, for consideration of any kind or for a com-
16 mercial purpose.

17 **SEC. 209. EFFECTIVE DATE.**

18 This title shall take effect on the date that is 6
19 months after the date of the enactment of this Act.

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